

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli & Hon. Michael Nash, Co-chairs
Regina Deihl, Juvenile Projects Attorney, 415-865-7646,
regina.deihl@jud.ca.gov

DATE: August 25, 2003

SUBJECT: Juvenile Law: De Facto Parent Status (adopt forms JV-295, JV-296,
JV-297, and JV-298; approve form JV-299) (Action Required)

Issue Statement

There is currently no statewide uniform procedure or practice for individuals to request de facto parent status. Many individuals who request the status are not represented by counsel. The lack of a standardized process results in inefficiencies when judicial officers cannot readily ascertain the information needed to determine the appropriateness of granting the request.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective January 1, 2004:

1. Adopt forms JV-295, *De Facto Parent Request*; JV-296, *De Facto Parent Statement*; JV-297, *De Facto Parent Order*; and JV-298, *Order Ending De Facto Parent Status*; and
2. Approve form JV-299, *De Facto Parent Pamphlet*.

The proposed forms are attached at pages 4–9.

Rationale for Recommendation

Rule 1401(a)(8) of the California Rules of Court defines a “de facto parent” as a person who has been found by the court to have assumed, on a day-to-day basis, the role of a parent to the child, fulfilling both the child’s physical and psychological needs for care and affection. Rule 1412(e) allows the juvenile court to grant de facto parent status to

those persons, giving them standing to participate as parties in disposition hearings and any hearing thereafter at which the status of the dependent child is at issue.

De facto parents may be present at hearings, be represented by retained counsel or, at the discretion of the court, by appointed counsel, and present evidence. Among the factors that courts have used to determine whether to grant de facto parent status are whether the child is psychologically bonded to the adult, the adult has assumed the role of a parent on a day-to-day basis for a substantial period of time, the adult possesses information about the child unique from that of other participants in the process, the adult has attended juvenile court hearings, and a future proceeding may result in an order permanently foreclosing any future contact between the child and the adult. (*In re Patricia L.* (1992) 9 Cal.App.4th 61.)

The *De Facto Parent Request* (form JV-295) would provide the court with the name, address, and telephone number of the person or persons requesting de facto parent status. Welfare and Institutions Code section 308(a) requires that the address of any licensed foster family home in which the child has been placed remain confidential until the dispositional hearing, at which time the judge may authorize, upon a finding of good cause, the disclosure of the address. A foster parent may authorize the release of the address of the foster family home at any time. The *De Facto Parent Statement* (form JV-296) would provide the court with factual information regarding the nature of the relationship between the child and the adult or adults seeking de facto parent status. The *De Facto Parent Order* (form JV-297) would provide a standard order form for use in granting, denying, or ordering a hearing on an adult's request for de facto parent status. The form would assist de facto parents in accessing court hearings and in providing documentation to social workers and others that they have attained de facto parent status. The *Order Ending De Facto Parent Status* (form JV-298) would provide a standard order form for terminating an order of de facto parent status. The *De Facto Parent Pamphlet* (form JV-299) would provide potential de facto parents with basic information written in easy-to-understand language.

Since many individuals who request de facto parent status are not represented by counsel, the forms use a plain English format adapted from the adoption forms currently in use. This format is intended to assist self-represented persons.

Alternative Actions Considered

The committee considered not adopting Judicial Council forms for de facto parent requests but decided that the proposed forms would enhance judicial efficiency by providing a standardized format for the requests.

Comments From Interested Parties

The invitation to comment on the proposal was circulated to the usual Rules and Projects Committee listing by mail and by posting on the Judicial Council Web site. It was circulated from April 17 through July 1, 2003.

Nine commentators responded. Four commentators approved of the forms as drafted. Four commentators approved of the forms if modified. One commentator did not approve of the forms.

Five commentators indicated that the forms would help by simplifying the process of requesting de facto parent status. One commentator noted that the forms' plain-language format guides the applicant in providing the kind of information a judicial officer needs to decide whether or not to grant de facto parent status. One commentator preferred that the forms have the same structure as other Judicial Council forms.

Three commentators suggested that the child's name be added to each form. Two commentators suggested a line be added so that two applicants could fill out the forms (for example, foster or kinship parents). Two commentators noted that more space is needed on the forms to provide factual information about the applicant's relationship with the child. Those changes have been made. One commentator requested that the item on form JV-296 indicating whether the applicant would request appointment of counsel be deleted. However, courts have the option of appointing counsel for de facto parents. (Cal. Rules of Court, rule 1412(e)(2).) Form JV-297 has been revised to indicate whether the court is appointing counsel for the de facto parent. Item 6 on JV-296 has been removed.

The comments and the committee's responses are summarized in the attached chart at pages 10–12.

Implementation Requirements and Costs

There are no costs associated with implementation of this proposal. Since individuals currently submit requests for de facto parent status using a variety of formats, the new forms should simplify the process for those who file them as well as for court clerks who need to file the forms in the appropriate court files.

Attachments

The address of any licensed foster family home must remain confidential unless the judge or the foster parent authorizes release of the address. Court clerks should not send this page to the parties without a court order or authorization of the foster parent. (Welf. & Inst. Code, § 308(a).)

DRAFT 8
9/29/03

Court name and street address:

Superior Court of California, County of

Case Number:

1 My/Our name(s): _____

My/Our address: _____

City: _____ State: _____ Zip: _____

My/Our phone #: (____) _____

2 I am/We are asking that I/we be appointed de facto parent(s) of
(Child's name): _____

Date: _____
Type or print your name

► _____
Signature of person requesting de facto parent status

Date: _____
Type or print your name

► _____
Signature of person requesting de facto parent status

Date: _____
Type or print attorney's name

► _____
Signature of attorney (if applicable)

Attorney's address: _____

City: _____ State: _____ Zip: _____

Attorney's phone #: (____) _____

DRAFT 8
9/29/03

Court name and street address:

Superior Court of California, County of

Case Number:

1 My/Our name(s): _____

2 The child's name: _____

☐ Boy ☐ Girl

Child's date of birth: _____ Age: _____

3 Relationship to child (grandparent, foster parent, etc.): _____

4 The child has lived with me from:

(date) _____ to (date) _____

(date) _____ to (date) _____

5 I have had responsibility for the day-to-day care of the child from:

(date) _____ to (date) _____

(date) _____ to (date) _____

6 Information the judge should know about my relationship with the child. *(This part must be completed).*

a. Amount of time I spend with the child (daily, weekly, etc.):

d. I ☐ have ☐ have not attended court hearings about the child.

e. I ☐ have ☐ have not sent a written report to the court about the child.

b. Activities I do with the child: _____

c. Kinds of information I have about the child that others may not have (medical, educational, behavioral, etc.):

7 I declare under penalty of perjury under the laws of the State of California that the information on this form is true and correct to my knowledge. This means if I lie on this form, I am committing a crime.

Date: _____

Type or print your name



Signature of person requesting de facto parent status

Date: _____

Type or print your name



Signature of person requesting de facto parent status

DRAFT 8
9/29/03

COURT WILL FILL OUT SECTION BELOW

The judge, after reading and reviewing the *De Facto Parent Request* and the *De Facto Parent Statement* filed by

(Name) _____

(Name) _____

asking to be appointed the de facto parent(s) of

(Child's name): _____ ,
orders:

- 1 ☐ The request for de facto parent status is granted.
- 2 ☐ The request for de facto parent status is denied.
- 3 ☐ The judge orders a hearing on the request for de facto parent status.

The hearing will take place on _____

at _____ a.m./p.m. in Department:

_____ of the Superior Court located at

The court ☐ does ☐ does not appoint a lawyer to represent the de facto parent.

The lawyer's name is: _____
(print name)

Date: _____



Judge (or Judicial Officer)

Court name and street address:

Superior Court of California, County of

Case Number:

This is a Court Order.

DRAFT 8
9/29/03**ORDER ENDING DE FACTO PARENT STATUS**

The court finds that there is a changed circumstance that no longer supports de facto parent status and hereby terminates appointment of:

(Name) _____

(Name) _____

as the de facto parent(s) of

(Child's name): _____

Court name and street address:

Superior Court of California, County of**Case Number:**

Date: _____

_____
*Judge (or Judicial Officer)***This is a Court Order.**

How does the juvenile court decide if I am a de facto parent?

Only the juvenile court can decide if you are a de facto parent. The judge will apply case law and rule 1401 (a) (8). He or she will consider the care you gave the child and how long you did it. Also, the judge will decide if you can help the court understand what is best for the child—the child's best interests. If you have harmed the child or put the child at risk, the judge will likely decide that you are not a de facto parent.

If the judge decides you are not a de facto parent, you may still tell the judge what you feel or know about the child by filing JV-290, the Caregiver Information Form or, if you are not the current caregiver, by sending a letter to the court.

De Facto Parent Pamphlet

You have been taking care of a child who has been declared a dependent of the juvenile court. You want to be more involved in the child's court case and are considering becoming a de facto parent.

This pamphlet describes:

- What your rights are if the juvenile court decides you are a de facto parent
- What is a de facto parent
- How to apply to the juvenile court to see if you are a de facto parent and
- How the juvenile court decides if you are a de facto parent.

If you want additional information or have specific questions, you may want to consult with an attorney. Call your local Bar Association to ask for a referral.

What are my rights as a de facto parent?

You have the following rights if a juvenile court judge finds that you are a de facto parent:

- To be present at dependency proceedings (Note: as a caregiver you can go to all dependency review and permanency hearings even if you are not a de facto parent.)
- To be represented by a lawyer, if you hire one. (In some cases the court may appoint a lawyer at no cost to you if the judge thinks it is necessary.)

- To present evidence and cross-examine witnesses and
- To participate as a party in the disposition hearing and any hearing after that.

You can learn more about these rights by reading rule 1413(e) of the California Rules of Court (available on the California Courts Web site: www.courtinfo.ca.gov).

Remember: A de facto parent is not the same as a parent.

You do not have the right to:

- Reunification services
- Attorney fees (but, in some cases the judge may give you an attorney, and the court will pay the fees.)
- Rehearing (you cannot ask for another hearing if you don't agree with the judge's decision, but you may have a right to an appeal).

What is a “de facto parent”?

You may be a de facto Parent if:

- The child is a dependent of the juvenile court.
- You are or have been taking care of the child every day.
- You have been acting as the child's parent.
- You are meeting (or have met) the child's needs for food, shelter, and clothing. You have also met the child's needs for care and affection.

No law says exactly what a “de facto parent” needs to be. Judges make this decision based on other court cases and on rule 1401(a)(8) of the California Rules of Court. You can read the rule on the California Courts Web site:

www.courtinfo.ca.gov

How do I apply for de facto parent status?

To apply, fill out the following forms: JV-295 and JV-296.

Form JV-295 asks for your name, address, and phone number. On the form, you tell the judge that you or someone else wants to be the child's de facto parent. If you are asking for someone else, you need to write that person's information on the form. Then you sign and date the form. If you have an attorney, he or she will sign the form too.

On form JV-296, you say why you think the judge should decide that you or the other person named on JV-295 are a de facto parent. List important things you did for the child and how often you did them. This is so the judge has all the information he or she needs to make a decision. Give information like:

- How long you have cared for the child;
- What you do with the child;
- What you do for the child;
- How much you care for the child;
- What you know about the child's special needs, desires, hopes;
- How you can meet the child's needs.

You can also attach letters from others who know you and the child. For example: teachers, therapists, pediatricians, spiritual advisors, etc.

SPR03-50**Juvenile Law: De Facto Parent Status**

(adopt forms JV-295, JV-296, JV-297, and JV-298; approve form JV-299)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Stephen Love Executive Officer Superior Court of California, County of San Diego	AM	N	Although these forms would increase the number of forms currently in use, their simplicity and the information they provide far outweigh any negative impact of having additional forms. Suggestions are: 1. Include the name of the child on JV-295 and JV-298. 2. JV-296, Item 5 may need attachments. 3. JV-296, Item 5e is vague. 4. JV-297, include the name of the applicant and the date of filing. 5. Various editorial and typographical changes.	1. Agree. This change has been made. 2. More space has been added to address this issue. 3. Agree. This item has been deleted. 4. The form has been revised to include the name of the applicant. The date of the order is already on the form. 5. Most of the suggested changes have been made.
2.	Ms. Diana Dorame Chair, Executive Committee of the Family Law Section of the State Bar	A	Y		
3.	Ms. Patricia Boles President North San Diego County Foster Parent Association	A	Y	These forms will allow foster parents the opportunity to petition the court for de facto parent status in a much simpler and well-defined manner than presently exists. The format is easy to understand and clearly guides the applicant towards the kind of information a judicial officer needs to decide whether or not the status should be granted.	Agree.
4.	Ms. Laura J. Bakker Senior Deputy County Counsel	AM	N	These forms should have the same structure as other Judicial Council forms.	The “plain English” format is adapted from the juvenile adoption forms currently in use and is intended to assist self-represented

SPR03-50**Juvenile Law: De Facto Parent Status**

(adopt forms JV-295, JV-296, JV-297, and JV-298; approve form JV-299)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Fresno County Counsel				persons.
5.	Ms. Janice Compton Program Specialist Riverside County Office of Aging—Grandparents Raising Grandchildren	A	N	These forms will be a wonderful addition for applicants for de facto parent status. Two suggestions are: 1. JV-296, Item 3 and Item 4, add an additional line so that relative caregivers may denote that a child has lived with them during more than one period of time. 2. JV-296, Item 5a, 5b, & 5c, add additional lines for information.	1. Agree. The change has been made. 2. Agree. The change has been made.
6.	Mr. Robert Gerard President Orange County Bar Association	A	Y	These forms will simplify the manner of making a request for de facto parent status, and orders relating to that request.	Agree.
7.	Ms. Tricia McCoy Supervising Clerk — Juvenile Division Superior Court of California, County of Kern	N	N	Item 6 on JV-296 should be removed. The courts are not able to appoint attorneys for de facto parents during these difficult budgetary times.	Courts have the option of appointing counsel for de facto parents. JV-297 has been revised to indicate whether or not the court is appointing counsel for the de facto parent. Item 6 on JV-296 has been removed.
8.	Ms. Patti Morua- Widdows Court Program Manager Superior Court of California, County of Ventura	AM	N	1. It would be helpful if each form indicated the name of the child. 2. Form JV-296 should indicate the name, age and sex of the child.	1. Agree. The name of the child has been added to the forms. 2. Agree. The form was been revised to indicate the name, age and sex of the child.
9.	Ms. Tina Rasnow State Bar Standing Committee on the Delivery of Legal	AM	N	We agree that these forms are more user friendly, but suggest the following changes: 1. Form JV-295, there is an overall problem	1. Notice of a hearing on an

SPR03-50**Juvenile Law: De Facto Parent Status**

(adopt forms JV-295, JV-296, JV-297, and JV-298; approve form JV-299)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
	Services Office of Legal Services, Access & Fairness Programs			<p>with the confidentiality issue and the need for interested parties to receive notice of the hearing. The language on the top of the form does not address the notice issue.</p> <p>2. The forms should include a place for the case name.</p> <p>3. An extra signature line should be added under “my name” since more than one person (e.g. foster or kinship parents) may be requesting the status.</p> <p>4. Form JV-296, Item 5 d should be split into two subparts.</p> <p>5. Various editorial and typographical changes.</p>	<p>applicant’s request for <i>de facto parent</i> status would be handled in the same manner as any other motion before the court.</p> <p>2. The child’s name has been added to the forms.</p> <p>3. Agree. This change has been made.</p> <p>4. Agree. This change has been made.</p> <p>5. Most of the suggested changes have been made.</p>